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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/518,983	03/03/00	JEAN	R 991207

Rudolf O Siegesmund  
Suite 2000  
4627 N Central Expressway  
Dallas TX 75205-4017

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EXAMINER

STRIMBU,G

ART UNIT

PAPER NUMBER

3634

DATE MAILED: 04/10/01

*6*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/518,983

Applicant(s)

R. Jean

Examiner

Gregory J. Stimbu

Group Art Unit

3634



☒ Responsive to communication(s) filed on Jan 23, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-17 is/are pending in the application.

Of the above, claim(s) 13-17 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-12 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☒ The proposed drawing correction, filed on Jan 23, 2001 is ☒ approved ☐ disapproved.

☒ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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***Restriction Requirement***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-12, drawn to a shutter, classified in class 049, subclass 074.1.
- II. Claims 13-17, drawn to a method of assembling a shutter, classified in class 049, subclass 506.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process as claimed can be used to make another materially different product such as a shutter that does not have a baseboard.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Rudolf O. Siegesmund on October 19, 2000 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-12. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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Applicant's election with traverse of Group I in Paper No. 6 is acknowledged. Since the applicant has not presented any arguments with respect to the restriction requirement, the requirement is still deemed proper and is therefore made FINAL. Accordingly, claims 13-17 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 6.

#### *Drawings*

The proposed drawing correction and/or the proposed substitute sheets of drawings, filed on January 23, 2001 have been approved.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the split baseboard and the stiffener fit between the first and second sections of the baseboard must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Applicant is required to submit a proposed drawing correction in reply to this Office action. However, formal correction of the noted defect can be deferred until the application is allowed by the examiner.

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***Specification***

The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed. It is suggested that the applicant amend the title to include the springs as set forth in claim 1.

***Claim Rejections - 35 USC § 112***

Claims 4, 5 and 9-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Recitations such as “the ends of the base slat support” on line 2 of claim 4 render the claims indefinite because they lack antecedent basis. Recitations such as “a slat” on line 3 of claim 5 render the claims indefinite because it is unclear if the applicant is referring to one of the slats set forth above or is attempting to set forth another slat in addition to the one set forth above. Recitations such as “beneath said base slat support” on line 15 of claim 9 render the claims indefinite because it is unclear how the springs can be beneath the base slat support when it appears that the springs only extend into the base slat support with the screws are beneath the base slat support. It appears that “joints ..” on line 2 of claim 12 is a typographical error.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faircloth in view of Cleaver et al. and Dayus. Faircloth discloses a shutter 10 comprising a top having a rear edge (not numbered, but comprising a rear edge of the top support) and a top support 24, a plurality of slats 60 having a top end 68 and a bottom end 62, a base slat support 40 affixed to a baseboard 22, a plurality of first securement devices 70, a plurality of second securement devices 64, wherein the plurality of top ends are affixed to the top support by a plurality of the first securement devices and wherein the plurality of bottom ends are affixed to the base slat support by the plurality of second securement devices. Faircloth is silent concerning springs and a top rear.

However, Cleaver et al. disclose a shutter 11 having a plurality of springs 26 disposed between an end of a plurality of slats 18 and a support 12, a base front 14, a base rear 14.

It would have been obvious to one of ordinary skill in the art to provide Faircloth with a plurality of springs, as taught by Cleaver et al., between the plurality of bottom ends and the base slat support to ensure the proper positioning of the slats within the frame of the shutter and to

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provide Faircloth with a base front and a base rear, as taught by Cleaver et al., to improve the aesthetics of the shutter.

Additionally, Dayus discloses a shutter 10 comprising a top (not numbered, but shown in figure 1) having a top rear (not numbered, but shown in figure 2 as the backside of element 14) affixed to a top support 16.

It would have been obvious to one of ordinary skill in the art to provide Faircloth with a top rear, as taught by Dayus to improve the aesthetics of the shutter and to prevent drafts.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faircloth in view of Cleaver et al. and Dayus as applied to claims 1-3 and 7 above, and further in view of Briggs. Briggs disclose a stiffener (not numbered, but shown in figure 4 as the horizontal element).

It would have been obvious to one of ordinary skill in the art to provide Faircloth, as modified above, with a stiffener, as taught by Briggs, to increase the strength of the base slat support.

Claims 5, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faircloth in view of Cleaver et al. and Dayus as applied to claims 1-3 and 7 above, and further in view of Lukaszonas. Lukaszonas discloses a shutter comprising slats 20 having a first ridge and a second ridge (not numbered, but shown in figures 3 and 4).

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It would have been obvious to one of ordinary skill in the art to provide Faircloth, as modified above, with louvers having first and second ridges, as taught by Lukaszonas, to provide a better seal between adjacent louvers.

Additionally, Lukaszonas discloses the use of screws 24 to attach the louvers 20 to a framework.

It would have been obvious to one of ordinary skill in the art to provide Faircloth, as modified above with screws, as taught by Lukaszonas, to more securely attach the louvers to the top support and the base slat support.

Finally, Lukaszonas discloses the use of joints 22 made of folded metal as shown in figure 5. Since it has been held that constructing formerly integral structures in various elements involves only routine skill in the art, *Nerwin v. Erlichman*, 168 USPQ 177, 179, it would have been obvious to one of ordinary skill in the art to connect the top rear to the top support of Faircloth, as modified above, with joints 22 to more easily vary the overall dimensions of the shutter to enable the shutter to fit a variety of differently sized windows.

Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faircloth in view of Dayus, Lukaszonas, Briggs and Cleaver et al. Faircloth disclose a shutter 10 comprising a top having a top front (not numbered, but comprising a rear edge of the top support) and a top support 24, a plurality of slats 60 each of the slats having a top end 68, a bottom end 62, a base slat support 40, a baseboard 22, a plurality of first securement devices 70, a plurality of second



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securement devices 64, wherein each of the top ends are affixed to the top support by the plurality of first securement devices, wherein each of the bottom ends are affixed to the base slat support by the second securement devices. Faircloth is silent concerning a top rear, a first ridge and a second ridge, a split baseboard, springs, a base front, a base rear and a stiffener.

However, Dayus discloses a shutter 10 comprising a top (not numbered, but shown in figure 1) having a top rear (not numbered, but shown in figure 2 as the backside of element 14) affixed to a top support 16.

It would have been obvious to one of ordinary skill in the art to provide Faircloth with a top rear, as taught by Dayus to improve the aesthetics of the shutter and to prevent drafts.

Additionally, Lukaszonas discloses a shutter comprising slats 20 having a first ridge and a second ridge (not numbered, but shown in figures 3 and 4), the use of screws 24 to attach the louvers 20 to a framework, and the use of joints 22 made of folded metal as shown in figure 5.

It would have been obvious to one of ordinary skill in the art to provide Faircloth, as modified above, with louvers having first and second ridges, as taught by Lukaszonas, to provide a better seal between adjacent louvers. It would have been obvious to one of ordinary skill in the art to provide Faircloth, as modified above with screws, as taught by Lukaszonas, to more securely attach the louvers to the top support and the base slat support. Since it has been held that constructing formerly integral structures in various elements involves only routine skill in the art, *Nerwin v. Erlichman*, 168 USPQ 177, 179, it would have been obvious to one of ordinary

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skill in the art to connect the top rear to the top support of Faircloth, as modified above, with joints 22 to more easily vary the overall dimensions of the shutter to enable the shutter to fit a variety of differently sized windows.

Moreover, Briggs disclose a stiffener (not numbered, but shown in figure 4 as the horizontal element) fitted between a first baseboard section 13a and a second baseboard section 13b.

It would have been obvious to one of ordinary skill in the art to provide Faircloth with a stiffener and base board, as taught by Briggs, to increase the strength of the base slat support.

Finally, Cleaver et al. disclose a shutter 11 having a plurality of springs 26 disposed between an end of a plurality of slats 18 and a support 12, a base front 14, a base rear 14.

It would have been obvious to one of ordinary skill in the art to provide Faircloth with a plurality of springs, as taught by Cleaver et al., between the plurality of bottom ends and the base slat support to ensure the proper positioning of the slats within the frame of the shutter and to provide Faircloth with a base front and a base rear, as taught by Cleaver et al., to improve the aesthetics of the shutter.

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*Response to Arguments*

Applicant's arguments filed January 23, 2001 have been fully considered but they are moot in view of the new grounds of rejection.

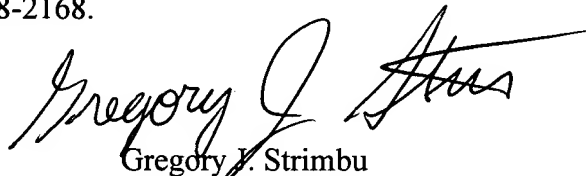
*Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. The applicant has amended the claims to include a top rear, a top front and a top support affixed to the top rear. See claim 1, line 2. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is (703) 305-3979. The examiner can normally be reached on Monday through Friday from 8:00 A.M. to 4:30 P.M. The fax phone number for this Group is (703) 305-3597. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-2168.

A handwritten signature in black ink, appearing to read "Gregory J. Strimbu", with a stylized flourish extending from the end.

Gregory J. Strimbu  
Patent Examiner  
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